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ADORNA PROPERTIES SDN BHD v BOONSOM BOONYANIT @ SUN YOK ENG

FEDERAL COURT (KUALA LUMPUR)
EUSOFF CHIN CHIEF JUSTICE, WAN ADNAN CJ (MALAYA) AND ABU MANSOR FCJ
13 DECEMBER 2000

Land Law — Indefeasibility of title and interest — Forged transfer — Standard of proof on balance of probabilities — Whether bona fide purchaser for valuable consideration without notice acquired indefeasible title — National Land Code 1965 — s 340(3)

The respondent claimed that she was the registered proprietor of a piece of land which had been sold and transferred to the appellant. The respondent claimed that the vendor had forged her signature and sold and transferred the land to the appellant and claimed to be restored as the registered owner of the land. The High Court dismissed the plaintiff's claim (see [1995] 2 MLJ 863). The decision of the High Court was reversed by the Court of Appeal (see [1997] 2 MLJ 62). The appellant appealed. The questions of law posed for decision were: (1) whether the standard of proof to prove forgery is on balance of probabilities or beyond reasonable doubt; and (2) whether the appellant, a bona fide purchaser for valuable consideration without notice, acquired an indefeasible title to the land by virtue of s 340(3) of the National Land Code 1965 ('the NLC').

Held, allowing the appeal:

(1) The court agreed with the Court of Appeal that the standard of proof required to prove forgery in civil cases is one on a balance of probabilities (see p 243H).

(2) By virtue of the proviso to sub-s (3) of s 340 of the NLC, any purchaser in good faith and for valuable consideration are excluded from the application of the substantive provision of sub-s (3). For this category of registered proprietors, they obtained immediate indefeasible title to the lands. Therefore, on the facts of this case, even if the instrument of transfer was forged, the respondent nevertheless obtained an indefeasible title to the land (see p 246B-D).

[Bahasa Malaysia summary

Penentang menuntut bahawa beliau ialah pemilik berdaftar sebidang tanah yang telah dijual dan dipindahmilik kepada perayu. Penentang mendakwa

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bahawa penjual telah memalsukan tandatangannya dan menjual dan memindahmilikkan tanah tersebut kepada perayu dan menuntut agar beliau dikembalikan menjadi pemilik berdaftar tanah tersebut. Mahkamah Tinggi menolak tuntutan plaintif (lihat [1995] 2 MLJ 863). Keputusan Mahkamah Tinggi tersebut dibatalkan oleh Mahkamah Rayuan (lihat [1997] 2 MLJ 62). Perayu telah merayu. Persoalan-persoalan undang-undang yang dikemukakan untuk diputuskan ialah: (1) sama ada taraf bukti untuk membuktikan pemalsuan adalah pada imbangan kebarangkalian atau tanpa keraguan munasabah; dan (2) sama ada perayu, seorang pembeli suci hati dengan balasan berharga tanpa notis, memperolehi hakmilik yang tidak boleh disangkal terhadap tanah tersebut menurut s 340(3) Kanun Tanah Negara 1965 ('KTN').

Diputuskan, membenarkan rayuan tersebut:

(1) Mahkamah bersetuju dengan Mahkamah Rayuan bahawa taraf bukti yang diperlukan untuk membuktikan pemalsuan dalam kes-kes sivil ialah atas imbangan kebarangkalian (lihat ms 243H).

(2) Kerana terdapatnya proviso kepada sub-s (3) s 340 KTN, semua pembeli suci hati dan dengan balasan berharga dikecualikan daripada pemakaian peruntukan substantif sub-s (3). Bagi kategori pemilik berdaftar ini, mereka memperolehi hakmilik yang tidak boleh disangkal serta-merta atas tanah tersebut. Oleh itu, berdasarkan fakta-fakta kes ini, walaupun suratcara pindahmilik tersebut dipalsukan, penentang masih memperolehi hakmilik yang tidak boleh disangkal atas tanah tersebut (lihat ms 246B-D).]]

Notes

For cases on forged transfer, see 8 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2136-2139.

Cases referred to

Boonsom Boonyanit v Adorna Properties Sdn Bhd [1995] 2 MLJ 863; [1997] 2 MLJ 62 refd
Choo Loong v Lip Kwai Kow (1930) 7 FMSLR 213 refd
Doshi v Yeoh Tiong Lay [1975] 1 MLJ 85 refd
Ellis v Ellis [1962] 1 WLR 227 refd
Frazer v Walker [1967] 1 AC 569 refd
Ong Lian v Tan Eng Jin (1917) 1 FMSLR 327 refd
Ong Lock Cho v Quek Shin & Sons Ltd [1941] MLJ 88 refd

Legislation referred to

FMS Land Code s 42
Land Transfer Act 1952 ss 62, 182, 183 [NZ]
National Land Code 1965 ss 340, (1), (2), (a), (b), (c), (3), (b)

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Appeal from:Civil Appeal No P-02–268–95 (Court of Appeal, Kuala Lumpur)

Ghazi Ishak (Murali Navaratnam and Ong Kheng Leong with him) (Ghazi & Lim) for the appellant.
Lim Kean Chye (BS Sidhu and Gerald Samuel with him) (Lim Kean Siew & Co) for the respondent.

EUSOFF CHIN CHIEF JUSTICE:

[1] (delivering judgment of the court): For the purpose of this appeal, it is sufficient to give only the brief facts of the case. The plaintiff who is the respondent in this appeal, and who is a Thai citizen, claimed that she was the registered proprietor of lands Lots 3606 & 3607 Mukim 18, Tanjung Bungah, Penang. She claimed that she was the true Mrs Boonsom Boonyanit, holder of Thai passport No D 080757, and that another person holding a Thai passport No 033852 bearing the name of Mrs Boonsom Boonyanit had forged her (the plaintiff's) signature, and had sold and transferred her lands to the defendant Adorna Properties Sdn Bhd, which is the appellant in this appeal. Before the sale, the lands had been valued by an independent property valuer. There were negotiations on the purchase price and on 15 December 1988, a sale and purchase agreement was signed, and the lands were finally transferred to the purchaser/appellant on 24 May 1989. The appellant, Adorna Properties claimed that it had no knowledge that the transfer documents were forged by someone who was not the true owner and had no reason to suspect that they were forged. Both the vendor and purchaser/appellant were represented by different solicitors in the sale and purchase of the lands. Further, it was not disputed that the sale was an arm's length transaction.

[2] The detailed facts of this case can be found in the High Court judgment which is reported in [1995] 2 MLJ at p 863.

[3] The High Court dismissed the plaintiff's claim that she (plaintiff) be restored as the registered owner of the lands.

[4] On appeal, the Court of Appeal reversed the order of the High Court. Hence this appeal to the Federal Court. The Court of Appeal's judgment is reported in [1997] 2 MLJ 62.

[5] Before us, two questions of law were posed for decision and the first is:

(i) For proof of forgery, such as the one under appeal, whether the standard of proof is on a balance of probabilities or beyond reasonable doubt?

The same arguments which the parties had put before both the High

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Court and the Court of Appeal were again argued before us. The High Court held that forgery must be proved beyond reasonable doubt, while the Court of Appeal held that it should be on a balance of probabilities. For the reasons given by the Court of Appeal — see [1997] 2 MLJ 62 at pp 73-77, we entirely agree that the standard of proof required to prove 'forgery' in civil cases is one on a balance of probabilities.

[6] The other question put for argument and decision in this appeal is:

(ii) Whether the defendant, a bona fide purchaser for valuable consideration without notice, acquired an indefeasible title to the properties (the lands) by virtue of s 340(3) of the National Land Code 1965?

[7] The Court of Appeal held that the signature on the document of transfer was forged. The High Court Judge had stated in his judgment that had he adopted the balance of probability standard of proof, there was sufficient evidence to show that the plaintiff's signature was forged.

[8] Both the High Court and Court of Appeal analyzed the authorities as early as the year 1917, ie *Ong Lian v Tan Eng Jin* (1917) 1 FMSLR 327, *Choo Loong v Lip Kwai Kow* (1930) 7 FMSLR 213; *Ong Lock Cho v Quek Shin & Sons Ltd* [1941] MLJ 88; *Frazer v Walker* [1967] 1 AC 569; *Doshi v Yeoh Tiong Lay* [1975] 1 MLJ 85; all based, on earlier legislation, ie s 42 FMS Land Code and ss 62, 182, 183 of the New Zealand's Land Transfer Act 1952. Both courts also considered carefully *Doshi v Yeoh Tiong Lay* [1975] 1 MLJ 85. The High Court held that *Doshi* was correctly decided by the then Federal Court, in that the registration conferred an immediate indefeasibility under our version of the Torrens system, whereas the Court of Appeal held otherwise.

[9] The present National Land Code ('the NLC') was enacted by Parliament in 1965 to be applied to all the states in West Malaysia. In doing so, s 338 of the NLC repealed all earlier land enactments of the states, and those enactments repealed are enumerated in the 11th Sch to the NLC.

[10] We are aware that any sovereign country may adopt and apply the Torrens system, but in adopting the system, it may modify the system to suit its own needs. Our Parliament did not slavishly follow the wordings of ss 62, 182 and 183 of Land Transfer Act 1952 of New Zealand, nor the wordings of s 42 of the FMS Land Code. Therefore, to follow the arguments in earlier decisions not based on s 340 of the NLC would only lead to utter confusion. We would therefore proceed to interpret s 340 NLC as it stands, and find what the real intention of Parliament was when enacting it, for the object of interpretation is to discover the intention of Parliament, and the intention of Parliament must be deduced from the language used.

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[11] Section 340 of the NLC states:

> Registration to confer indefeasible title or interest, except in certain circumstances
>
> (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
>
> (2) The title or interest of any such person or body shall not be indefeasible —
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
>
> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
>
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
>
> (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-s (2) —
>
> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
>
> (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
>
> Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.
>
> (4) Nothing in this section shall prejudice or prevent —
>
> (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
>
> (b) the determination of any title or interest by operation of law.

[12] Subsection (1) of s 340 NLC is worded in plain language. It says that the 'title or interest of any person for the time being registered as proprietor of any land … shall be indefeasible' subject to the provisions contained in the section.

[13] We must bear in mind that a person may be registered as the sole

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proprietor or as a co-proprietor of a piece of land, but he is for the purpose of this section still a registered proprietor. He might have become a registered proprietor of the land because he had bought it, or he got it by way of a gift, or by way of transmission upon the death of his parent or spouse. Therefore, a piece of land may have one proprietor or many co-proprietors. Subsection (1) of s 340 NLC deals with everyone of them as long as he is currently a registered proprietor of that piece of land. So long as his name is on the land register, his title or interest is indefeasible unless caught by sub-s (2) and (3).

[14] Subsection (2) of s 340 NLC uses the word 'such'. When the word 'such' occurs in a section it must not be ignored, but must be read as referring back to the preceding provision — *Ellis v Ellis* [1962] 1 WLR 227.

[15] Subsection (2) states that the title of any such person, ie any registered proprietor or co-proprietor for the time being, is defeasible if one of the three circumstances in sub-s (2)(a), (b) or (c) occurs. We are concerned here with sub-s (2)(b) where the registration had been obtained by forgery.

[16] Subsection (3) says that where that title is defeasible under any of the three circumstances enumerated under sub-s (2), the title of the registered proprietor to whom the land was subsequently transferred under the forged document, is liable to be set aside. Similarly, sub-s 3(b) says any interest under any lease, charge or easement subsequently 'granted thereout', ie out of the forged document may be set aside.

[17] However, sub-s (3) of s 340 NLC does not stop there. It contains a proviso.

[18] It is a cardinal rule of interpretation that a proviso to a particular section or provision of a statute only embraces the field which is covered by the main provision. The object of a proviso is to qualify or limit something which has gone before it. Its proper function is to except and deal with a case which would otherwise fall within the general language of the main provision of the statute, and its effect is confined to that case. In other words, the object of a proviso is to carve out from the substantive section or clause of a statute, a class or category of persons or things to whom or to which the main section does not apply. The proviso cannot be divorced from the main clause to which it is attached. It must be considered together with the section or subsection of the statute to which it stands as a proviso.

[19] The proviso to sub-s (3) of s 340 of the NLC deals with only one class or category of registered proprietors for the time being. It excludes from the main provision of sub-s (3) this category of registered proprietors so that these proprietors are not caught by the main provision of this subsection. Who are

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these proprietors? The proviso says that any purchaser in good faith and for valuable consideration or any person or body claiming through or under him are excluded from the application of the substantive provision of sub-s (3). For this category of registered proprietors, they obtained immediate indefeasibility notwithstanding that they acquired their titles under a forged document.

[20] We therefore, agree with the High Court Judge that, on the facts of this case, even if the instrument of transfer was forged, the respondent nevertheless obtained an indefeasible title to the said lands.

[21] We allow this appeal with costs here and the Courts below to be taxed and paid by the respondent to the appellant.

Appeal allowed.

Reported by Jafisah Jaafar